

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on January 13, 1999  
at 3:00 P.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Mike Taylor (R)  
Sen. Bill Wilson (D)

**Members Excused:** Sen. Dale Mahlum, Vice Chairman (R)

**Members Absent:** None.

**Staff Present:** Larry Mitchell, Legislative Branch  
Jyl Scheel, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted:  
Executive Action: SB 64; SB 98; SJ 3; SB 72

#### **EXECUTIVE ACTION ON SB 64**

**Motion:** SENATOR COLE MOVED DO PASS ON SB 64.

**Discussion:** SENATOR KEATING asked during the Hearing why they  
were merging the construction fees and permitting fees into the  
same account as recommended by the auditor. He found out the

permit fees are smaller for permitting purposes and after the person is permitted and they start operating they pay a larger annual fee during their operation. He obtained copies of the list of permits and list of operating for several years for the Committee to review. **EXHIBIT(nas09a01)** The permitting amounted to \$30M in one year where as the operating fees were \$1.5MM. For bookkeeping purposes it is just as well to merge the two. His questions were answered and he is satisfied with the language of the bill.

**SENATOR GROSFIELD** visited with the Department about the other issue in the bill relating to the variance from MEPA compliance. If an owner wants to move from one location to another, they have to apply to and be approved by the Department before they can do a location transfer. If the new location has different air standards, that is all taken into consideration and the emissions on the unit may be changed with respect to that location or, in some cases, they may be denied the ability to move to that location.

He received a letter from DEQ regarding the public notice requirement as per **EXHIBIT(nas09a02)**.

**SENATOR COCCHIARELLA** stated she was going to vote NO on this bill. The Department wrote a letter to **SEN. COCCHIARELLA** in response to her concerns as per **EXHIBIT(nas09a03)**. She understands the concerns of the people in the business, the short time frame and all the work that goes into making sure this happens right. She is voting NO because she feels we are starting down a slippery slope when we put in exemptions from MEPA review.

**SENATOR CHRISMORE** stated there was discussion at the Hearing wishing that **Todd Everts of EQC** were there to add to the testimony. He was in attendance today and was asked to relay any information he had with regard to his discussion with DEQ.

**Todd Everts** stated he had a chance to visit with the Department. In November they came to him asking were there previous exemptions to MEPA in statutes and he told them there were. They also discussed categorical exclusion and whether that could be used. They made a determination that it would be difficult to go through a categorical exclusion process.

**SENATOR GROSFIELD** asked if there was a bill last session that dealt with an exclusion or some other function from MEPA review. **Mr. Everts** responded that was correct. In 1995 there was a timber sale emergency exclusion.

**Vote:** MOTION DO PASS SB 64 CARRIED 8-1, with SEN. COCCHIARELLA VOTING NO.

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 8.6; Comments : None}***

**EXECUTIVE ACTION ON SB 98**

**Motion:** SENATOR GROSFIELD MOVED DO PASS ON SB 98.

**Discussion:** SENATOR GROSFIELD stated he would like to amend this bill in several different ways, one of which would be to eliminate the sunset altogether and make this permanent. Another would be to get rid of the need for DFWP decisions regarding an eligible stream. Another would be to eliminate a cap on stream reaches period. He was prepared to do this but during the hearing there was still some opposition. Because this has been controversial from day one, it took quite an effort to pass this in 1989. He was comfortable with continuing in this manner for another ten years and did not offer any amendments now on that basis.

SENATOR KEATING reminded the Committee at the Hearing SEN. MAHLUM had asked how much waste water went back to the stream after irrigation and SEN. COLE explained to SEN. MAHLUM the correct term was return flow not waste water. For the record, would SEN. GROSFIELD have any kind of figure or rule of thumb for the return flow from irrigation. SEN. GROSFIELD agreed there was a difference between waste water and return flow. Waste water is a term of origin in the statute that has to do with, for example, someone letting their well just run. That is defined as waste. Return flow is site specific. In a river bottom with a lot of gravelly soils that are not porous under the surface, there are some rules of thumb with respect to how much water it would take to irrigate an acre of land. If there is some soil storing capability, you might get by with an inch a year or maybe three inches depending on the crop. If you are in cobbly soils you may need to go over it many, many times and with many, many inches because the water mostly goes down and is gone. In the Big Hole River Basin, part of the reason for the good September flows of that river is because of the irrigation early in the season. It is also a timing question and how long it takes to get back to the stream which has to do with how far away from the stream you apply the water. It also has to do with soils and geology and should be determined on a stream specific basis.

SEN. KEATING thanked SEN. GROSFIELD for his explanation because stream flow is an important factor in all of the things the Committee does.

**Vote: MOTION DO PASS SB 98 CARRIED 10-0.**

***{Tape : 1; Side : A; Approx. Time Counter : 8.6 - 13.3; Comments : None.}***

**EXECUTIVE ACTION ON SJ 3**

**Motion: SENATOR COCCHIARELLA MOVED DO PASS ON SJ 3.**

**Discussion:** SENATOR GROSFIELD stated there was a comment from one of the proponents concerned about voluntary best management practices. Some of the discussion in the committee and some of the intent of this bill is to urge State Agencies not only to develop Best Management Practices but to comply with state law regarding some of these sites along the streams. For example on Line 18, in committee, it was suggested that it should say "voluntary and mandatory" best management practices. He does not think there are mandatory BMP's, we have mandatory actions and mandatory practices but was not sure if there are management practices.

**Abe Harpstead, DEQ,** stated there was a requirement for reasonable land, soil and water conservation practices. The way we interpret that is BMP's are necessary but not sufficient to satisfy that requirement.

**SENATOR COCCHIARELLA** spoke to Janis Ellis following the Hearing. She discussed "mandatory". From the recent discussion she felt the need to leave the resolution as is. If there are mandatory situations out there now, then the state agencies should be complying with the law. This resolution is intended to promote the adoption of BMP's in a more formal way and to be accountable to someone for recording them. She agreed it was not necessary to amend this resolution for those mandatory situations.

**SENATOR KEATING** stated "be it resolved that EQC make a priority of requesting state agencies with land management responsibilities to report to the Council prior to the next legislative session on the respective agencies progress and accomplishments related to the content of the resolution." He is concerned with time costing money and questioned what kind of report would fulfill this request for reports to EQC?

**Larry Mitchell** stated he could only surmise what the next Council might direct staff to do in regard to implementing this resolution. It could be something as simple as an outline of the type of activities listed here or it could be a lengthy report, it would be up the Council.

**CHAIRMAN CHRISMORE** stated he felt the intent of EQC would be to have a fairly simple report.

**SENATOR KEATING** stated when the private sector breaks the law, they get fines and get thrown in jail if they are not careful. Our state departments suffer no consequences for breaking those same laws and that is why he agrees with the theme of this resolution. From a budgeting standpoint as long as he has some sense that this is not going to add a lot to the cost of what those departments are doing, he feels encouraged to do what is right.

**Vote: MOTION DO PASS ON SJ 3 CARRIED 10-0.**

**{Tape : 1; Side : A; Approx. Time Counter : 13.3 - 23.6; Comments : None.}**

**EXECUTIVE ACTION ON SB 72**

**Motion: SENATOR GROSFIELD MOVED DO PASS ON AMENDMENTS SB007203.alm. EXHIBIT(nas09a04).**

**Discussion: SENATOR GROSFIELD** stated this amendment gets rid of the two repealers that a number of people commented on during the hearing.

**Larry Mitchell** said the majority of these amendments are technical amendments that are needed to clean up the Act. The two enforcement sections that were contentious, 75-5-617 and 75-6-110 which were repealed in the act, are no longer repealed in this bill. In the repealer, Amendment #9 changes the repeal section on page 8. It will now read, repealer section 75-5-501 is repealed.

**SENATOR COCCHIARELLA** commented on the repealer of the repealer. She hoped when the Department comes before the committee in the near future with its general revision of enforcement activities, they will be able to present how they intend to standardize enforcement and how they plan to deal with these subjects due to the same repealer being in that bill. They need to have an enforcement manual to show us, which EQC has been requesting for awhile.

**Vote: AMENDMENTS DO PASS. CARRIED UNANIMOUSLY 10-0.**

**Motion: SENATOR COLE MOVED DO PASS ON SB 72 AS AMENDED.**

**Discussion:** **SENATOR KEATING** questioned the amendment pertaining to page 7 line 19. What would a violation pertaining to a public water system be?

**John Dillard, DEQ**, stated the violation referred to for a public water system could involve several different things such as (1) not performing the tests of the water; (2) not properly treating the water before it is delivered to users; (3) improperly chlorinating the water. In the amendment the \$1000 would apply only to a system that serves 10,000 or more people.

**SENATOR KEATING** questioned why the water haulers and bottling plants were exempt? **Mr. Dillard** answered they are considered the smaller entity. They supply water to a smaller group of people. Another reason they were excluded is to put us directly in line with the Federal requirements.

**SENATOR GROSFIELD** questioned that a public system is 10,000 or more people. **Mr. Dillard** replied the changes made to this section for a fine of \$1,000 per day violation only applies to a public water system that has a population of 10,000 or more. A smaller system would only be a \$500 per day violation. **SEN. GROSFIELD**, stated that public water system is not the same as a public water system other places in the statute. **Mr. Dillard** replied, the definition of a public water system is a system that serves 15 or more service connections or serves 25 people or more daily. Any system that size or larger would be a public water system. **SEN. GROSFIELD** questioned why this only applies as you get up to 10,000. **Mr. Dillard** responded the Federal government, in the amendments to the safe drinking water act, determined that a penalty for a larger system needs to be larger due to the extent of the violation and the amount of public health threat that a violation on those systems would impose.

**Vote:** MOTION DO PASS SB 72 AS AMENDED CARRIED 10-0.

Executive Action on **SB 48** will be postponed until January 20 to allow the Committee more time to review.

{Tape : 1; Side : A; Approx. Time Counter : 23.6 - 33.5; Comments : None.}

**ADJOURNMENT**

Adjournment: 3:45 P.M.

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SEN. WILLIAM CRISMORE, Chairman

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JYL SCHEEL, Secretary

WC/JS

**EXHIBIT (nas09aad)**